

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

PNC BANK, NATIONAL  
ASSOCIATION,

Plaintiff,

vs.

MICHAEL WILSON and KAREN L.  
SELL,

Defendants.

CV 14-80-BU-DWM-JCL

ORDER

MICHAEL WILSON,

Counter Claimant,

vs.

PNC BANK, NATIONAL  
ASSOCIATION,

Counter Defendant.

This matter is before the Court on Plaintiff PNC Bank, National Association's Motion to Dismiss. (Doc. 37.) Magistrate Judge Jeremiah Lynch entered Findings and Recommendation on June 4, 2015, recommending granting in part and denying in part the motion. (Doc. 49.) The parties have not file

objections.

On dispositive motions, the parties are entitled to de novo review of the specified findings or recommendations to which they object. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where there are no objections, the court is to give the level of consideration it deems appropriate, *Thomas v. Arn*, 474 U.S. 140, 150 (1985), and this Court reviews for clear error. Clear error exists if the court is left with a “definite and firm conviction that a mistake has been committed.” *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., Inc.*, 508 U.S. 602, 623 (1993) (internal quotation marks omitted).

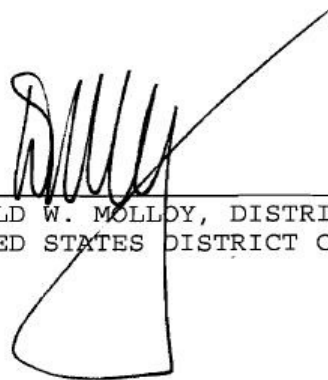
The Court finds no clear error in the finding that Wilson’s counterclaims are not barred by the statute of limitations pursuant to Mont. Code Ann. § 27–2–408. The Court also finds no clear error in the findings that Wilson’s claims for fraud and constructive fraud are deficient under the particularity requirement of Federal Rule of Civil Procedure 9(b) but that Wilson’s allegations adequately state a claim under the Montana Consumer Protection Act.

Accordingly, IT IS ORDERED that the Findings and Recommendation (Doc. 49) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Plaintiff’s Motion to Dismiss (Doc. 37) is

GRANTED IN PART and DENIED IN PART. Defendant Michael Wilson's counterclaims for fraud and constructive fraud are DISMISSED.

DATED this 23<sup>rd</sup> day of June, 2015.



DONALD W. MOLLOY, DISTRICT JUDGE  
UNITED STATES DISTRICT COURT